

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROY FANG,

Plaintiff,

v.

BIG 5 CORP.

Defendant.

Case No. 2:13-CV-01926-RSL

ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS PURSUANT TO
FRCP 12(b)(6)

This matter comes before the Court on Defendant’s Motion To Dismiss For Failure To State A Claim FRCP 12(b)(6) or In The Alternative, Requiring Plaintiff to Post Security for Costs (Dkt. # 6). Plaintiff has not responded.

The Court has considered the allegations of the Complaint (Dkt. #1) and taken judicial notice of Exhibits A – G in Defendant’s Request for Judicial Notice. (Dkt. # 7). Plaintiff is an “alien person” (Dkt. #1 at ¶6), Defendant is a “domestic person,” (Dkt. #1 at ¶ 7) and Plaintiff’s claims are “on account of “Defendant’s trademark (Dkt. #1 at ¶¶ 7-13) as those terms are defined in RCW 19.77.170. Plaintiff’s Taiwanese trademark is used by Plaintiff “outside the United States,” is not registered with the United States Patent and Trademark Office (“PTO”), is not capable of being registered with the PTO, and is junior to Defendant’s trademark. (Dkt. #1 at ¶¶ 13-14). In addition, Plaintiff’s claimed trademark does not cover

1 “retail sporting goods and wearing apparel stores,” which are the goods and services identified in
2 Defendant’s PTO-issued trademark. (Dkt. #1 at ¶¶ 13-14).

3 The Complaint fails to state a claim upon which relief can be granted,
4 FRCP 12(b)(6), because Plaintiff’s trademark is not entitled to Lanham Act protection, and
5 additionally, because RCW§19.77.170 applies to this action and bars recovery of “money
6 damages or equitable relief,” the very relief sought by Plaintiff. (Complaint, Dkt. #1, ¶ 48 and
7 Prayer for Relief).

8 It is ORDERED:

- 9 1. The Complaint is dismissed, and
10 2. The Clerk is directed to send copies of this Order to the parties, or counsel
11 for the parties, and to the Domain Name Registrar, eNom, Inc.,

12 DONE THIS 26th day of March, 2014.
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16 Robert S. Lasnik
17 United States District Judge
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